

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6160 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DIPSINH @ DEPU CHATURJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MS PAHWA for M/S THAKKAR ASSOC. for Petitioner
MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/10/2000

ORAL JUDGEMENT

1. The petitioner - Dipsinh @ Depu Chaturji TGhakor came to be detained by virtue of an order passed by the Commissioner of Police, Vadodara City, Vadodara on June 10, 2000 in exercise of powers conferred under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').
2. The grounds of detention served on the petitioner indicate that the detaining authority while considering

the case of the petitioner for detention took into consideration three offences registered against the detenu, two of which are under the provisions of the Bombay Prohibition Act, while third is u/S. 326 of the Indian Penal Code and section 135 of the Bombay Police Act. The detaining authority also took into consideration statements of three anonymous witnesses. The authority considered possibility of resorting to less drastic remedy, and came to conclusion that it is not possible to resort to such less drastic remedy as the petitioner is required to be immediately prevented from pursuing his illegal and anti social activities which are detrimental to public order.

3. The petitioner by way of this petition under Article 226 of the Constitution challenges the order of detention in this petition on various grounds. However, Ms. Pahwa learned advocate appearing for the petitioner has restricted her arguments to the fact that the statements of anonymous witnesses relied upon by the detaining authority were verified by the authority on 4/6/2000, though they were recorded on 1/5/2000. She, therefore, submitted that the urgency shown by the detaining authority for detaining the petitioner is not genuine. Ms. Pahwa further submitted that the detaining authority has branded the petitioner as a 'bootlegger'. For arriving at this conclusion the authority has relied upon three offences registered against detenu, one of which is punishable under sec. 326 of the IPC and sec. 135 of the Bombay Police Act registered with Sayajiganj Police Station at C.R. No. I 92/2000, which is pending investigation. She submitted that this is consideration of an extraneous factor. She further submitted that so far as prohibition cases are concerned, they are stale instances and do not establish casual connection between the order of detention and the offences. For this purpose she has drawn attention of this Court to the fact that two offences under the provisions of Bombay Prohibition Act were registered in the years 1997 and 1999 respectively; whereas the order of detention is passed on 10/6/2000 i.e. nearly after 30 months and 15 months respectively. She, therefore, submitted that the order of detention would get vitiated and the same may be quashed and set aside.

4. Mr. Bhatt, Ld. AGP has opposed this petition. He submitted that the petitioner detenu is involved in prohibition cases and his activities are detrimental to public order and public health. He tried to justify the consideration of the offence under the provisions of the IPC. He also tried to convince this Court that there was

no delay in verification and it cannot be said that the urgency recorded by the detaining authority for detaining the petitioner is not genuine. He submitted that as no grounds are made out, the petition may be dismissed.

5. Having regard to the rival side contentions raised by the learned advocates, it is clear that the detaining authority has in fact taken into consideration an offence registered with Sayajiganj Police Station vide C.R. No. I 92/2000, which is an offence punishable under the provisions of the IPC and/or Bombay Police Act, but not under the provisions of the Bombay Prohibition Act. Whereas the detenu has been branded as a 'bootlegger' and not as a 'dangerous person'. The definition of 'bootlegger' as defined u/S. 2(b) of the PASA Act reads as under :

"(b) 'bootlegger' means a person who distills, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any provision of the Bombay Prohibition Act, 1949 and the rules and orders made thereunder, or of any other law for the time being in force or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the things described above by or through any other person, or who abets in any other manner the doing of any such thing;"

It is, therefore, clear that the detaining authority has committed an error in taking into consideration the above extraneous material in the form of activity not falling within the definition of word 'bootlegger' as defined under the PASA Act. Registration of that offence is for this purpose an irrelevant or extraneous material and the satisfaction of the detaining authority on the question of detenu being a bootlegger would, therefore, held adversely affected so far as its genuineness is concerned and would stand vitiated.

6. Division Bench of this Court in Special Criminal Application No. 1183 of 1992 has decided a similar question wherein the detaining authority labelled the detenu as a 'dangerous person' and took into consideration a case registered for the offence punishable under the Bombay Prohibition Act. The Division

Bench observed thus :-

"This is certainly an irrelevant circumstances as far as consideration as to whether the person is a dangerous person or not is concerned. Thus, while arriving at the satisfaction on the question that the detenu was a dangerous person, the detaining authority took into consideration the irrelevant material. Therefore, the satisfaction arrived at by the detaining authority cannot be said to be genuine and it stands vitiated."

7. An identical question arose in Special Civil Application No. 8234/1999 between Harish @ Haribhai Jayramdas Brahmkshatriy (Sindhi) and Commissioner of Police decided on 14/3/2000 and a view was taken that consideration of such offence would vitiate the order of detention.

8. In the light of the above discussions, the order of detention under challenge would stand vitiated and cannot be permitted to stand. Therefore, the petition deserves to be allowed.

9. In the result, the petition is allowed. The impugned order of detention passed by the Commissioner of Police, Vadodara City, Vadodara is hereby quashed and set aside. The petitioner - Dipsinh @ Depu Chaturji Thakor is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

PVR.